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| 09/932,431 | 08/17/2001 | Gary Stephen Shuster | 409475-40 | 3441 |
| 7590 06/03/2005 | | EXAMINER | | |
| O'MELVENY & MYERS LLP 400 So. Hope Street | | | BILGRAMI, ASGHAR H | |
| Los Angeles, CA 90071-2899 | | | ART UNIT | PAPER NUMBER |
| | • | | 2143 | |
| | | DATE MAILED: 06/03/2005 | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary Examiner | , | Application No. | Applicant(s) | | | |
|--|---|-------------------------|-------------------------------------|--|--|--|
| Asghar Bilgrami - The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Buth 950 (8) MONTHS from the middle date of this communication. If the period for reply seculided show is liss than thirty (70), days, a reply within the side town of thing (30) sure will be considered timely. If the period for reply seculided show is listed than thirty (70), days, a reply within the side town of thing (30) sure will be considered timely. If all the foreign within the side of sended period for regived this state of readed period for regive that the side than the addition to the mailing date of this communication. Figure for the Office is than the models after the mailing date of this communication, even if thereby find, may reduce any seminative than adjustment. See 37 CFR 1.76(b). Status 1) Responsive to communication (s) filled on 15 February 2005. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 21-236 is/are period. (Claim(s) 21-236 is/are epicted. (Claim(s) is/are allowed. (S) Claim(s) is/are objected to by the Examiner. 10) The drawing(s) field on 17 August 2001 (s/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The drawing(s) field on 17 August 2001 (s/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The precification is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 10) Althory of the priority documents have been received in Application No. 11 Paper No(9) Molito Claim (PTO-152) Paper No(9) Molito Claim (PTO-152) Paper No(9) Molito Claim (PTO-152) Paper No(9) | Office Action Summan | 09/932,431 | | | | |
| The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Bereations of this map to a variety with a continuous of 7 CFR 1.130(a). In no event, however, may a riply be limity filled If the period for riply is pecified above, the maximum of 3 CFR 1.130(a). In no event, however, may a riply be limity filled If the period for riply is pecified above, the maximum and training period vall again and vall riply is 100 MoNTHS from the mailing date of this communication, Any riply received by the Office lizer than there months after the mailing date of this communication, and vinging the office lizer than the mailing date of this communication, even if timely filled, may reduce any service and the period of the communication of the mailing date of this communication, even if timely filled, may reduce any service and the mailing date of this communication, even if timely filled, may reduce any service and the mailing date of this communication, even if timely filled, may reduce any service and the mailing date of this communication, even if timely filled, may reduce any service and the mailing date of this communication. 1) ☐ Responsive to communication(s) (filled on 15 February 2005. 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final. 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) ☐ Claim(s) 21-26 is/are allowed. 5) ☐ Claim(s) 21-36 is/are allowed. 6) ☐ Claim(s) 21-36 is/are allowed. 7) ☐ The drawing(s) filled on 17 August 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner. 10) ☐ The drawing | Oπice Action Summary | Examiner | Art Unit | | | |
| Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. • Mail Six (3) MONTHS from the maintained and previous of 37 CPR 1.136(a), in an overal, however, may a reply be timely filled distributed for reply specified below, the maintained and previous of 37 CPR 1.136(a), in an overal, however, may a reply be timely filled distributed from the maintained and the specified of the specified of the specified of the specified distributed from the maintained also of the specified of the specified distributed from the maintained also of this communication, wend if limely filled, may reduce any searched paleet from adjustment. See 37 CPR 1.704(b). Status 1) | | Asghar Bilgrami | 2143 | | | |
| THE MAILING DATE OF THIS COMMUNICATION. Estandance of time may be aroticle under the communication of 3 or Fit 1.356(a). In no event, however, may a repty be timely filled after \$0.00 MONTH's form the mailing dase of that communication. **In Open of or repty is geneficial above. The machinary being visible the substance vision in the mailing dase of this communication. **Failure to repty will be depended above. The machinary being visible the substance vision is part and under the mailing dase of this communication, even if timely (20) days will be considered timely. **Failure to repty will be in the service of the repty will by stable. cause the application to become ARANDONED, 03 U.3. 2, § 133). **Any repty receive by the Office under the failure of the communication, even if timely filed, may reduce any surround paint firm selection is in Condition of allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <code>Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) □ Claim(s) 21-36 is/are pending in the application. 4a) Of the above claim(s)</code> | | | | | | |
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| 2a This action is FINAL. 2b This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. | Status | | | | | |
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| Disposition of Claims 4) | · _ | | | | | |
| 4) | | | | | | |
| 4a) Of the above claim(s) is/are withdrawn from consideration. 5) □ Claim(s) is/are allowed. 6) □ Claim(s) is/are rejected. 7) □ Claim(s) is/are objected to. 8) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) □ The specification is objected to by the Examiner. 10) □ The drawing(s) filed on 17 August 2001 is/are: a) □ accepted or b) □ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) □ All b) □ Some * c) □ None of: 1. □ Certified copies of the priority documents have been received. 2. □ Certified copies of the priority documents have been received in Application No 3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) □ Notice of References Cited (PTO-892) 2) □ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) □ Information Disclosures Statement(s) (PTO-1449 or PTO/SB/08) 5) □ Notice of Informal Patent Application (PTO-152) 6) □ Other: Short Control of the Certified Copies of Informal Patent Application (PTO-152) 6) □ Other: Short Control of Claims (PTO-152) 7 | Disposition of Claims | | | | | |
| 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or election requirement. Application Papers 9) ☐ The specification is objected to by the Examiner. 10) ☐ The drawing(s) filed on is/are allowed accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) ☐ All b) ☐ Some * c) ☐ None of: 1. ☐ Certified copies of the priority documents have been received. 2. ☐ Certified copies of the priority documents have been received in Application No 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) ☐ Notice of References Cited (PTO-892) 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) ☐ Information Disclosures Statement(s) ☐ 1.149 or PTO/SB/08) 5) ☐ Notice of Informal Patent Application (PTO-152) 6) ☐ Other: | 4)⊠ Claim(s) <u>21-36</u> is/are pending in the application. | | | | | |
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| a) | 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). | | | | | |
| 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 03 25 00 0 0 Other: | | | | | | |
| 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) ☐ Notice of References Cited (PTO-892) 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) ☑ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ○ 3 ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ ○ | 1. Certified copies of the priority documents have been received. | | | | | |
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| Paper No(s)/Mail Date 03 26 0 € 6) ☐ Other: | 2) D Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail D | ate | | | |
| | 3) M Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No/s)/Mail Date: 0.3 1 26 0 3 | | Patent Application (PTO-152) | | | |
| PTOL-326 (Rev. 1-04) Office Action Summary Part of Paper No./Mail Date 20050523 | U.S. Patent and Trademark Office | | art of Paner No /Mail Date 20050523 | | | |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 2. Claims 21-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Rakoshitz et al (U.S. 6,578,077 B1).
- 3. A per claims 21 & 29 Rakoshitz disclosed a method for operating a server group to improve bandwidth efficiency in a computer network, wherein the server group is operable to transmit files between the server group and destinations on the computer network through a communication link having a finite bandwidth (col.6, lines 3-13, the method comprising: monitoring bandwidth usage of a communication link for connecting a server group to a wide area network, using software operably associated with the communication link; distributing a rule set to individual servers of the server farm, wherein the rule set defines rules for limiting serving of data from the individual servers depending on file type and a current state of the bandwidth usage (col.9, lines 24-62); characterizing files stored in operable association with the individual servers according to type, using software operating on the individual servers (col.15, lines 42-56); informing the individual servers of the current state of the bandwidth usage as

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monitored by the software operably associated with the communication link; and serving the files from the individual servers to the wide area network via the communication link in compliance with the rule set, so as to limit serving of specified file types from the servers during periods when the bandwidth usage exceeds a threshold amount relative to a finite bandwidth of the communication link (col.14, lines 57-62).

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- 4. A per claims 22, 23 & 24 Rakoshitz disclosed the method of Claim 22, wherein the characterizing step further comprises characterizing a type of each of the files based on a corresponding file name extension for each file (col.14, lines 41-44 & col.15, lines 42-56).
- 5. A per claims 24 & 32 Rakoshitz disclosed the method of Claim 21, wherein the characterizing step further comprises crawling through a memory operably associated with the server to identify associated groups of files, wherein each of the groups of files is configured to be aggregated into a larger file (col.9, lines 24-62 & col.15, lines 42-67).
- 6. As per claims 25 & 33 Rakoshitz disclosed the method of Claim 21, wherein the characterizing step further comprises crawling through files stored in a storage device operably associated with the server to identify files that do not contain hyperlinks and are not identified by hyperlinks in other files stored by the storage device(col.9, lines 24-30 & col.15, lines 42-67).

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7. A per claims 26 & 34 Rakoshitz disclosed the method of Claim 21, wherein the serving

step further comprises selecting a rule from the rule set according to the current state of the

bandwidth usage (col.9, lines 49-62)

8. A per claims 27 & 35 Rakoshitz disclosed the method of Claim 21, further comprising

distributing a replacement rule set to individual servers of the server group when the current state

of the bandwidth usage changes by more than a specified amount, wherein the replacement rule

set replaces the rule set and defines rules for limiting serving of data from the individual servers

depending on file type and a current state of the bandwidth usage (col.9, lines 24-62).

9. A per claims 28 & 36 Rakoshitz disclosed the method of Claim 21, further comprising

repeating the informing step at periodic intervals (col.20, lines 42-65).

Response to Arguments

10. Applicant's arguments filed 15 February 2005 have been fully considered but they are not

persuasive. When prior art is presented to the applicant, it is the responsibility of the applicants

to not simply read portions of the prior art but to also gain an understanding of the spirit of the

design.

11. Applicant argued that "In response to the Examiner's argument in paragraph 11 of the

Office Action, Applicant submits that the statement by Rakoshitz that "the bandwidth

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management) tool can be deployed an any appropriate point in the network data path" (col. 9:33-

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34) does not amount to a disclosure of the distributed architecture of the present invention".

As to applicants arguments Rakoshitz clearly describes on col.9, lines 24-30 that bandwidth management tool (software based) is loaded onto the server.

12. The applicant argued that "Rakoshitz fails to disclose or suggest, and teaches away from, operating a server group to limit serving of specified file types during periods of high bandwidth, and informing the individual servers of the group of a current bandwidth usage state using a monitoring software, as defined by Claim 21".

As to applicant's argument Rakoshitz along with disclosing the monitoring of the bandwidth (col.9, lines 40-62) and also disclosed a software that is monitoring and controlling traffic on the basis of file types on (col.2, lines 39-45, col.7, lines 61-67, col.8, lines 1-2, col.13, lines 35-54 & col.14, lines 41-44).

The applicant argued that "Rakoshitz fails to disclose or suggest separate software distributed as defined by Claim 29, with monitoring and communicating functions performed in association with a communication link, and characterizing and serving functions, including implementation of bandwidth management rules, at the server level".

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As to applicants arguments Rakoshitz clearly states on col.9, lines 24-29, that the bandwidth management tool (software) is loaded onto the "server" from where it performs the management and monitoring functions (col.9, lines 40-62).

14. The applicant argued that "Rakoshitz fails to disclose or suggest crawling through stored server files to characterize certain file types, as defined by Claims 24-25 and 32-33".

As to applicants arguments it is obvious from the art disclosed by Rakoshitz that the management software is loaded on the server is basically analyzing the server by the virtue of crawling through the server for various file types and other variation associated with the server. (col.9,lines 24-62 & col.15, lines 42-56).

Conclusion

15. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The

examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Asghar Bilgrami

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Examiner

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AB

PRIMARY EXAMINER